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 11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
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	)		)
	)		)
UNITED STATES POSTAL SERVICE,	)	Case No. 16-cv-4815-WHA	)
	)		)
Plaintiff,	)		)
	)		)
v.	)		)
	)		)
CITY OF BERKELEY	)		)
	)		)
Defendant.	)		)
	)		)
	)		)
	)	[PROPOSED] ORDER	)
	)		)

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 24  
 25 Upon consideration of Defendant’s Motion for Protective Order, ECF No. 67, the  
 26 opposition thereto, ECF No. 68, and the reply in support thereof, ECF No. 69; the Plaintiff’s  
 27

28 *United States Postal Service v. City of Berkeley*, Case No. 16-cv-4815  
 [Proposed] Order

1 letters of September 29, 2017, ECF No. 73, and October 5, 2017, ECF No. 77; the Defendant's  
2 letter of October 6, 2017, ECF No. 78; and the argument at the hearing on October 11, 2017, IT  
3 IS HEREBY

4 ORDERED that Defendant's Motion for Protective Order is GRANTED IN PART AND  
5 DENIED IN PART. Plaintiff's depositions of the City's Legislators shall be limited to one  
6 Planning Commissioner of the City's choice as a 30(b)(6) witness, two City Councilmembers of  
7 Plaintiff's choice, and former Mayor Bates. [Tr. 40:10–22] One of the two City  
8 Councilmembers deposed by Plaintiff may be Mayor Arreguín, who was a City Councilmember  
9 at the time of the enactment of Berkeley Municipal Code Chapter 23E.98, the Civic Center  
10 District Overlay (the "Zoning Ordinance") (hereinafter collectively "City Official Deponents").  
11 [Tr. 40:1–5, 45:10–15] No depositions of other members of the City Council or Planning  
12 Commission will be permitted. [Tr. 40:21–22, 44:21–45:15, 47:16–18]

13 At such depositions, Plaintiff may inquire as to non-privileged matters including, but not  
14 limited to:

- 15 1. Objective historical facts that led up to the passage of the Zoning Ordinance [Tr. 35:  
16 5–6], such as statements previously made by the City Official Deponents to parties  
17 regarding the intended effect of the Zoning Ordinance [Tr. 34:22–25, 37:9–11];
- 18 2. The City Official Deponents' present-day opinions about the effects of the Zoning  
19 Ordinance [Tr. 36:24–25, 37:8–12, 43:18–22];
- 20 3. Communications by the City Council, the Mayor, or the Planning Commission  
21 regarding the Berkeley Main Post Office or the Zoning Ordinance with Save The  
22 Berkeley Post Office, the Downtown Berkeley Association, or the National Post  
23 Office Collaborate [Tr. 41:14 –43:22];
- 24 4. Communications by the City Council, the Mayor, or the Planning Commission that  
25 followed up on the directive in Resolution 66,025-N.S. that "the City shall reach out  
26 to other Cities affected by the sale of postal facilities to develop a collective  
27 response" [Tr. 44:1–22]; and

1 5. Communications by the City Council, the Mayor, or the Planning Commission with  
2 real estate brokers or consultants regarding the value of the Berkeley Main Post  
3 Office or the proposed sale of the Berkeley Main Post Office. [Tr. 45:16–23]

4 The Postal Service is entitled to testimony regarding Topics 1–2, *supra*, irrespective of whether  
5 the City Official Deponents’ prior statements regarding the intended effect of the Zoning  
6 Ordinance, *see* Topic 1, *supra*, or their present-day opinions about the effect of the Ordinance,  
7 *see* Topic 2, *supra*, actually include the word “effect.” [Tr. 43:21–22]; and

8 FURTHER ORDERED that the City Official Deponents shall not be asked or required to  
9 answer any questions as to their unstated mental states and internal motivations regarding the  
10 Zoning Ordinance [Tr. 35:3–4, 38:14–15]; and

11 FURTHER ORDERED that there shall be no objections at depositions, including those of  
12 the City Official Deponents, except to protect privilege. [Tr. 50: 2–3] The communications with  
13 third parties covered by Topics 3–5, *supra*, are not privileged. [Tr. 47:10–18] All other  
14 objections shall be preserved. [Tr. 49:12–16]

15  
16 **SO ORDERED.**

17 Dated: \_\_\_\_\_

18 \_\_\_\_\_  
19 HON. WILLIAM ALSUP  
20 UNITED STATES DISTRICT JUDGE